

Singing the Blues in Contract Law

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Antonia Eliason, *Lillian McMurry and the Blues Contracts of Trumpet Records*, 87 **Miss. L.J.** 279 (2018), available at [SSRN](#).

[Professor Eliason's](#) *Lillian McMurry and the Blues Contracts of Trumpet Records* combines some of my favorite things—contract law, legal history, and Mississippi blues. Through the article, Eliason weaves a narrative of a compelling female protagonist, [Lillian McMurry](#), who founded, operated, and finally closed the [Trumpet Records](#) (“Trumpet”) label in 1950s Jackson, Mississippi. This article provides a fantastic historical snapshot of the music industry at the time of itinerant blues artists who created the musical backbone of rock ‘n roll.

My interest in music industry contracting was sparked by Judge [Jerome Frank's](#) dissent in [M. Whitmark & Sons v. Fred Fisher Music Co.](#) The majority opinion is relatively straightforward in upholding an artist's assignment of contingent copyright renewal rights that would mature twenty-two years in the future. In contrast, Judge Frank in dissent exhibited remarkable judicial hubris (as well as, perhaps, the dark side of Legal Realist judging) in attempting to refuse specific enforcement of the original contract on fairness grounds. Specifically, Judge Frank would have substituted his own biased view of the relationship between artists and publishers:

We need only take judicial notice of that which every schoolboy knows—that, usually, with a few notable exceptions (such as W. Shakespeare and G. B. Shaw), authors are hopelessly inept in business transactions and that lyricists, like the defendant Graff, often sell their songs “for a song.”¹

Frank's generalization of the ineptitude of artists also has a corollary implication that publishers who exploit this perceived weakness should lose the ability to enforce their contracts in equity. In so doing, Frank illustrates Arthur Allen Leff's observation that “[T]he benevolent have a tendency to colonize, whether geographically or legally.”²

Eliason's article is useful as a subtle rebuke of Frank's sweeping schoolboy generalization. Instead of one-sided exploitation, Eliason presents a nuanced picture of Trumpet Records as its contracts developed and its owner built relationships with artists.

McMurry founded Trumpet in 1950, having no experience in the industry. A 28-year-old white woman, McMurry worked with white and black artists across a range of musical styles. As Eliason relates, “At both a contractual and a personal level, McMurry did not distinguish between her white and black artists, and her correspondences demonstrate that she operated without concern for segregationist attitudes in Mississippi at the time.” (P. 282.) Moreover, Eliason's analysis of the terms of the Trumpet contracts opens a window on the challenges and frustrations experienced by a new business owner trying to create a successful business on principled terms in a highly competitive field.

Eliason's original historical research delved into the [Blues Archives](#) at the University of Mississippi, as well as documents preserved in the Mississippi Supreme Court relating to Trumpet's contract dispute over copyright with one artist, Sherman “Blues” Johnson. The historical contracts demonstrate that McMurry and Trumpet became increasingly sophisticated in their contracts over the life of the label. Eliason helpfully includes examples of these contracts in appendices to the article.

The Trumpet contracts showed McMurry's development as she gained experience. For example, early contracts

required artists to secure their own copyright permissions to use others' work, but McMurry later made Trumpet responsible given the lack of sophistication among the Trumpet artists and the general borrowing culture among blues musicians. Similarly, early Trumpet contracts required artists to provide a fixed number of "test records" or auditions every month. Over time however, McMurry reduced the fixed recording requirements, eventually merely requiring such material only "from time to time," apparently recognizing that artistic works were not well-suited to a fixed production schedule.

Eliason addresses many challenges that McMurry encountered while running Trumpet records. Most notably, Eliason analyzes a 1954 dispute with artist Sherman "Blues" Johnson over whether the Trumpet contract assigned Trumpet copyright to materials created before the contract term. Johnson recorded [Pretty Baby Blues](#) for Trumpet. But [Saving My Love For You](#), the song at issue in Trumpet's dispute with Johnson, was sung by artist Johnny Ace. Ultimately, the Mississippi Supreme Court held the Trumpet contract ambiguous and interpreted the term to apply only to materials created during the term of the contract, an outcome that left McMurry feeling distressed and betrayed. Likewise, Eliason analyzes McMurry's work to protect the Trumpet artists against piracy even decades after Trumpet closed its doors.

The most intriguing section of the article presents McMurry's personal interactions with the Trumpet artists. Analyzing McMurry's correspondence with the artists, Eliason paints a picture of a business owner who truly cared about the artists who worked for her, but at the same time attempted to operate the business professionally. The correspondence shows McMurry insisting on performance of the Trumpet contract terms but also being willing to work with the artists as they encountered difficulties. In one instance, for example, McMurry advanced an artist money to travel home to Mississippi while at the same time noting that the artist was in violation of the contract. In another letter, McMurry attempted to locate the widow of an artist (for whom Trumpet had paid medical and funeral expenses) to ensure the widow received royalty payments. And other correspondence indicates a close personal relationship with artist Sonny Boy Williamson and his wife Mattie during the breakup of their apparently troubled marriage. These letters reveal McMurry as both a hard-nosed businessperson and someone who cared about those who worked with her.

As Eliason concludes, in the context of the highly-competitive and often exploitative music industry, "Lillian McMurry was an exceptional individual whose adherence to the letter of her contracts and treatment of her artists was unusual." (P. 310.) This article is a great piece of legal history that provides valuable real-life information about a fascinating time in music history.

1. *M. Witmark & Sons v. Fred Fisher Music Co.*, 125 F.2d 949 (2d Cir. 1942) 949, 955.
2. Arthur Allen Leff, [Unconscionability and the Code: The Emperor's New Clause](#), 115 *U. Pa. L. Rev.* 485, 557 (1967)

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